



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

**Jerry W. Kilgore**  
Attorney General

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**MEMORANDUM**

**TO: VICTORIA P. SIMMONS**  
Regulatory Coordinator  
Department of Medical Assistance Services

**FROM: PAIGE S. FITZGERALD**  
Special Counsel to DMAS

**DATE: October 17, 2003**

**SUBJECT: Proposed Regulations concerning Inpatient Hospital Capital Costs:  
Reduce Inpatient Hospital to 80%**

I am in receipt of the proposed regulations concerning changes to inpatient hospital capital costs. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services has the legal authority to promulgate the attached proposed regulations and to identify any federal or state mandates regarding this regulation.

Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. These regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to make permanent the changes to regulations concerning a reduction in inpatient hospital capital costs to 80% of allowable costs. These changes regarding inpatient hospital capital cost reductions were originally made by the promulgation of emergency regulations, and were approved by this Office in a memorandum dated May 2, 2003.

The authority for both the previously promulgated emergency regulations and these

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proposed regulations regarding indirect care cost reductions derives from this year's Appropriation Act (Chapter 1042 of the 2003 Acts of Assembly, Item 325(OOO)). Item 325(OOO) states that: "[t]he Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to reduce reimbursement for inpatient and outpatient hospital capital costs to 80 percent of allowable cost except Type One hospitals. Type One hospitals shall continue to be reimbursed at levels currently in effect."

If you have any questions or need any additional information, please feel free to call me at 786-3450.

cc: Siran S. Faulders, Esquire

Attachment